

201 KAR 41:080. Complaint procedure.

RELATES TO: KRS 329A.025(3)(g), (i)-(k), 329A.040(2)(a), 329A.060(2), (3)

STATUTORY AUTHORITY: KRS 329A.060(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 329A.060(1) states that the board shall promulgate administrative regulations regarding the receiving and investigating of complaints. This administrative regulation establishes procedures for the filing, evaluation, and disposition of administrative complaints.

Section 1. Definitions. (1) "Chair" means the chairman or vice-chairman of the board.

(2) "Charge" means a specific allegation contained in a formal complaint, as established in subsection (5) of this section, issued by the board alleging a violation of a specified provision of KRS Chapter 329A, the administrative regulations promulgated thereunder, or any other state or federal statute or regulation.

(3) "Complaint" means any written allegation of misconduct by a licensed individual or other person which might constitute a violation of KRS Chapter 329A, the administrative regulations promulgated thereunder, or any other state or federal statute or regulation.

(4) "Complaint screening committee" means a committee consisting of up to two (2) members of the board appointed by the chair to review complaints, investigative reports, and to participate in informal proceedings to resolve a formal complaint. In addition to board members, the Executive Director of the Division of Occupations and Professions or another staff member may be appointed to assist the committee, but shall not have voting privileges.

(5) "Formal complaint" means a formal administrative pleading authorized by the board which sets forth charges against a licensed individual or other person and commences a formal disciplinary proceeding pursuant to KRS Chapter 13B or requests the court to take criminal or civil action.

(6) "Informal proceedings" means the proceedings instituted at any stage of the disciplinary process with the intent of reaching a dispensation of any matter without further recourse to formal disciplinary procedures under KRS Chapter 13B.

(7) "Investigator" means an individual designated by the board to assist the board in the investigation of a complaint or an investigator employed by the attorney general or the board.

Section 2. Receipt of Complaints. (1) A complaint:

(a) May be submitted by an:

1. Individual;
2. Organization; or
3. Entity.

(b) Shall be:

1. In writing; and
2. Signed by the person offering the complaint.

(c) May be filed by the board based upon information in its possession.

(2) Upon receipt of a complaint:

(a) A copy of the complaint shall be sent to the individual named in the complaint along with a request for that individual's response to the complaint. The individual shall be allowed a period of twenty (20) days from the date of receipt to submit a written response.

(b) Upon receipt of the written response of the individual named in the complaint, a copy of the response shall be sent to the complainant. The complainant shall have seven (7) days from receipt to submit a written reply to the response.

Section 3. Initial Review. (1) After the receipt of a complaint and the expiration of the period for the individual's response, the complaint screening committee shall consider the individual's response, complainant's reply to the response, and any other relevant material available and make a recommendation to the board. The board shall determine whether there is enough evidence to warrant a formal investigation of the complaint.

(2) If the board determines before formal investigation that a complaint is without merit, it shall:

(a) Dismiss the complaint; and

(b) Notify the complainant and respondent of the board's decision.

(3) If the board determines that a complaint warrants a formal investigation, it shall:

(a) Authorize an investigation into the matter; and

(b) Order a report to be made to the complaint screening committee at the earliest opportunity.

Section 4. Results of Formal Investigation; Board Decision on Hearing. (1) Upon completion of the formal investigation, the investigator shall submit a report to the complaint screening committee of the facts regarding the complaint. The complaint screening committee shall review the investigative report and make a recommendation to the board. The board shall determine whether there has been a prima facie violation of KRS Chapter 329A or the administrative regulations promulgated thereunder and a complaint should be filed.

(2) If the board determines that a complaint does not warrant the issuance of a formal complaint, it shall:

(a) Dismiss the complaint; and

(b) Notify the complainant and respondent of the board's decision.

(3) In the case of a nonserious violation, the board shall follow the procedure established in KRS 329A.060(3).

(4) If the board determines that a complaint warrants the issuance of a formal complaint against the respondent, counsel for the board, in conjunction with the complaint screening committee, shall prepare a formal complaint which states clearly the charge or charges to be considered at the hearing. The formal complaint shall be reviewed by the board and, if approved, signed by the chair and served upon the individual as required by KRS Chapter 13B. The formal complaint shall be processed in accordance with KRS Chapter 13B.

(5) If the board determines that a person may be in violation of KRS 329A.015, it shall:

(a) Order the individual to cease and desist from further violations of KRS 329A.015; or

(b) Initiate action in circuit court pursuant to KRS 329A.025(3)(l) for injunctive relief to stop the violation of KRS 329A.015.

Section 5. Settlement by Informal Proceedings. (1) The board through counsel and the complaint screening committee may, at any time during this process, enter into informal proceedings with the individual who is the subject of the complaint for the purpose of appropriately dispensing with the matter.

(2) An agreed order or settlement reached through this process shall be approved by the board and signed by the individual who is the subject of the complaint and the chair.

(3) The board may employ mediation as a method of resolving the matter informally.

Section 6. Notice of Service of Process. A notice required by KRS Chapter 309 or this administrative regulation shall be issued pursuant to KRS Chapter 13B.

Section 7. Incorporation by Reference. (1) "Complaint Form and Instructions", (2006 Edi-

tion), is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Licensure for Private Investigators, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. (32 Ky.R. 2393; 33 Ky.R. 730; eff. 10-6-2006.)